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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRIENDS OF ANIMALS, a non-profit
corporation,

Plaintiff,

v.

DEB HAALAND, in her official capacity as
Secretary of the Interior; and

THE UNITED STATES BUREAU OF LAND
MANAGEMENT, an agency of the United States

Defendants.

Case No. 3:22-cv-00365-ART-CLB

**PLAINTIFF'S MOTION FOR STATUS
CONFERENCE**

INTRODUCTION

Plaintiff Friends of Animals requests a status conference to discuss how this case should proceed and whether a motion for a preliminary injunction is appropriate. Friends of Animals conferred with Defendants, and Defendants indicated that they take no position on this Motion and they reserve the right to state their position after they see the Motion.

PROCEDURAL BACKGROUND

Friends of Animals filed its Complaint on August 15, 2022. Compl., ECF No. 1. This case involves the United States Bureau of Land Management's (BLM) environmental assessment (EA), finding of no significant impact (FONSI), and decision record awarding a contract to JS Livestock that provides federal funding for the containment, feeding, and care for up to 4,000 wild horses and burros removed from public land at an off-range corral (ORC) facility. The ORC is located on 100 acres of private land owned by JS Livestock in Winnemucca, Nevada (the "Winnemucca ORC" or the "ORC").

Through this action, Friends of Animals asserts violations of the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), the Wild Free-Roaming Horses and Burros Act (16 U.S.C. §§ 1331 *et seq.*), and the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*). The parties completed summary judgment briefing on June 5, 2023. *See* Pl.'s Mot. for Summ. J., ECF 26; Defs.' Cross Mot. for Summ. J. and Resp., ECF 34; Pl.'s Reply in Support of Pl.'s Mot. for Summ. J., ECF 35; Defs. Reply in Supp. of Cross Mot. for Summ. J., ECF 37.

REASONING FOR REQUESTING A STATUS CONFERENCE

Friends of Animals requests a status conference with the Court as soon as practicable to determine whether a motion for a preliminary injunction is appropriate and schedule briefing on such motion if needed. Although BLM released the Final EA, FONSI and Decision Record on November 3, 2021, AR_6, 10, the Winnemucca ORC could not operate until it obtained a National Pollutant Discharge Elimination System (NPDES)/ Concentrated Animal Feeding Operations (CAFO) permit from the Nevada Division of Environmental

1 Protection (NDEP). NDEP did not grant JS Livestock's NPDES permit until September 7,
2 2022. Decl. of Andreia Marcuccio in Supp. Pl.'s Mot. for Status Conference (Marcuccio Decl.),
3 Ex. 3 at 1.

4 At that time, Friends of Animals did not file a preliminary injunction because it did
5 not believe BLM would transfer any wild horses or burro to the Winnemucca ORC before a
6 decision on the merits could be reached. BLM's 2022 gather schedule only had one
7 roundup listed in Nevada between September 2022 and March 2023 (the Calico Complex
8 roundup). Marcuccio Decl., Ex. 4 at 2. BLM never issued a notice or statement indicating
9 that specific wild horses or burros would be sent to the Winnemucca ORC. BLM stated it
10 would transport the wild horses from the Calico Complex roundup to the Indian Lakes ORC.
11 *Id.* Ex. 6 at 1. Further, the original briefing schedule in this case, EFC 21, required briefing to
12 be complete by May 4, 2023. This allowed for more time for this case to be decided on the
13 merits before additional horses were sent to the Winnemucca ORC because BLM's roundup
14 manual states that BLM will not roundup wild horses and burros via helicopter during
15 foaling period which is "generally March 1 to June 30 for most herds." Marcuccio Decl., Ex. 7
16 at 11.

17 However, without any public notice, in October of 2022, BLM sent at least 143 wild
18 horses to the Winnemucca ORC. *Id.*, Ex. 8 at 11. Between November of 2022 and March of
19 2023, the Winnemucca ORC held between 499-538 wild horses per month. *Id.* at 1, 3, 5, 7, 9.
20 Friends of Animals was unaware that BLM transported any horses to the Winnemucca ORC
21 until after the fact on November 18, 2022, when Defendants' counsel stated that there were
22 approximately 500 animals at the ORC. Marcuccio Decl. at ¶ 2, Ex. 1 at 1. Defendants'
23 counsel stated that "[t]he horses currently being processed at the Winnemucca ORC are
24 primarily from the Twin Peaks Complex and there are also a smaller number of horses
25 from the Blue Wing Complex and Antelope Range." *Id.*, Ex. 2 at 2. Thus, the animals at the
26 Winnemucca ORC were likely moved there from other holding facilities because BLM
27 rounded up animals from those herds in August of 2022, before the Winnemucca ORC was

1 authorized to operate. *Id.*, Exs. 9 & 10. Notably, nothing on BLM's website for those
2 roundups disclosed that the wild horses would be sent to the Winnemucca ORC. *Id.*

3 Friends of Animals asked Defendants' counsel to notify them before BLM transports
4 additional animals to the Winnemucca ORC. Marcuccio Decl., Ex. 2 at 2, 4, 6. Defendants'
5 counsel stated there is "no current schedule or plan" for sending additional wild horses or
6 burros to the Winnemucca ORC, but "BLM cannot predict the circumstances regarding any
7 future decisions for gathering [wild horses and burros] from any specific location or which
8 ORC facility gathered horses will be sent to, as that determination is subject to a variety of
9 factors including distance from the gather." *Id.*, Ex. 2 at 3. Defendants' counsel also stated
10 "BLM issues a press release prior to the start of helicopter gather operations that also
11 informs the public as to which facility or facilities the [wild horses and burros] will be
12 moved to." *Id.* However, BLM did not issue a press release before sending animals to the
13 Winnemucca ORC and it is unknown when, or if, BLM will provide notice before additional
14 wild horses or burros are sent to the Winnemucca ORC. BLM would not agree to provide
15 Friends of Animals with specific advance notice before sending wild horses and burros to
16 the Winnemucca ORC. *Id.*, Ex. 2 at 1.

17 In April 2023, BLM issued a tentative roundup schedule which includes several
18 roundups in Nevada starting in July. Marcuccio Decl., Ex. 5. BLM's schedule indicates that it
19 plans to remove 3,307 wild horses from these roundups in Nevada, the first of which starts
20 on July 1, 2023. *Id.* Two of the largest roundups are scheduled to start on Sunday, July 9 and
21 would remove over 3,000 wild horses. *Id.* Given the roundup schedule, it is very likely that
22 BLM will transport a significant number of animals to the Winnemucca ORC and
23 irreparably harm these animals as well as Friends of Animals and its' members' interests.
24 Thus, if the Court is unable to issue a decision on the merits by Friday, July 7, 2023, Friends
25 of Animals intends to file a preliminary injunction to preserve the status quo and stop BLM
26 from transferring a significant number of wild horses and burros to the Winnemucca ORC.
27

CERTIFICATE OF SERVICE

I certify that on June 6, 2023, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

Dated: June 6, 2023

Respectfully submitted,

s/ Andreia Marcuccio

Andreia Marcuccio